Ch-15

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Single Bench

CIVIL REVISION NO. 91 **/2006**

APPLICANT : Ram Awatar, S/o. Bhukhan Singh,
DEFENDANT NO.1 Caste - Kurmi, Aged about 37 years, Occupation - Kashtkari, R/o. Village Kewanchhi, P.O. Jhal, Tahsil - Bemetara, Distt. - Durg (CG)

VERSUS

NON-APPLICANTS : 1] Dhaniram S/o. Jivrakhan Singh Kurmi, Aged about 36 years, Occupation Kashtkari, R/o. Village Bahera, Post Karesara, Tahsil - Bemetara, District - Durg (CG)

---------- **[Plaintiff]**

P.R. No. 1729/06 Presented by Shri V.K. Agrawal Adv. dated 26/9/06

2] Khediya Bai Wd/o. Jivrakhan Kurmi, Aged about 68 years, Kashtkar, R/o. Village Bahera, Post - Karesara, Tahsil - Bemetara, District - Durg (CG)

3] Fagani, Aged about 45 years, W/o. Kapil Kurmi, Occupation Kashtkari, R/o. Village - Aamora, Post Bijabhat, Tahsil - Bemetara, District - Durg (CG)

4] Lagani W/o. Darman Kurmi, Aged about 41 years, Occupation - Kashtkari, R/o. Village - Hathmudi, Post - Bemetara, Tahsil - Bemetara, District - Durg (CG)

5] Thagani, Aged about 39 years, W/o. Ramhu, Occupation Kashtkari, R/o. Village-Kandai, Post - Ninawa, Tahsil - Bemetara, District - Durg (CG)

6] Thagiya W/o. Pitambar @ Santosh Kurmi, Aged about 28 years, Occupation - Kashtkari, R/o. Village Jiya, Post - Jewara, Tahsil - Bemetara, District - Durg (CG)

7] Ramdhan S/o. Jivrakhan Kurmi, Aged about 33 years,

8] Maniram S/o. Jivrakhan Kurmi, Aged about 33 years,

9] Aamin Wd/o. Ramnath Kurmi, Aged about 43 years,

10] Chandu S/o. Ramnath Kurmi, Aged about 25 years,

11] Dhelau S/o. Ramnath Kurmi, Aged about 22 years,

12] Dhela Bai D/o. Ramnath Kurmi, Aged about 19 years,

---------- **[Defendants]**

Resp.No. 7 to 12- Occupation - Kashtkar and all resident of Village - Karchuva, Post Karesara, Tahsil - Bemetara, Distt. - Durg (CG)

CIVIL REVISION UNDER SECTION 115 OF CODE OF CIVIL PROCEDURE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

C.R. NO. 91 06

मामला क्रमांक ..... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश क्रमांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	15.11.2006 Shri Vaibhav Goverdhan, learned counsel for the applicant. Shri D.C. Verma, learned counsel for non-applicant No. 1. Heard on admission. The applicant/defendant is aggrieved by the judgment and decree dated 15.9.2005 delivered by the Addl. District Judge, Bemetera, Distt. Durg in Civil Appeal No. 01-B/2004 affirming the judgment and decree dated 19.1.2004 passed by the Addl. Civil Judge, Class-I in Civil Case No. 140-B/2002. Brief facts are that Dhaniram had instituted a Civil Suit against Ram Awatar for recovery of Rs. 10,200/- on the ground that Ram Awatar had borrowed a sum of Rs. 3,000/- and 6 quintals of soyabean from his late father Jivrakhan. All the legal representatives of Jivrakhan were parties to the Civil Suit No. 140-B/2002 and admitted the claim of the plaintiff. To prove its pleading of repayment of the loan, the defendant/applicant herein, did not enter the witness box in the lower Court. Both the Courts below refused to place reliance on the testimony of witnesses Gangadhar and Bukhan examined by the defendant on the ground that since the loan of Rs. 3,000/- and the quantity of 6 quintals of soyabean was borrowed by Ram Awatar after acknowledging the same on a document it was highly improbable that repayment of the loan would not have been got acknowledged by him from Jivrakhan. Learned counsel for the applicant placed reliance on **1980 (2) M.P.W.N No-10** while contending that the suit was not maintainable since succession certificate was not filed by the plaintiff. He also contended that both the Courts below have failed to exercise jurisdiction vested in them on a	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

C.R. NO. 91/05

मामला क्रमांक ..... सन् 2006

(24)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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mere assumption that Jivrakhan would have acknowledged the repayment of loan by executing a document. On the other hand, Shri D.C. Verma, learned counsel for the non-applicant No. 1 argued in support of the impugned judgment.

Having considered the rival submissions, this civil revision deserves to be dismissed in *limine*. All the legal representatives of Jivrakhan were brought on record as defendants and had admitted the claim of the plaintiff. Non filing of the succession certificate would not therefore render the suit liable to be dismissed. The case law cited by the learned counsel for the applicant is thus distinguishable. In view of the fact that the defendant/applicant did not enter the witness box and that the defendant had borrowed the sum of Rs. 3,000/- and 6 quintals of soyabean from Jivrakjan was an admitted fact, I am of the considered opinion that the impugned judgment and decree is well founded and calls for no interference.

Consequently, this civil revision, being devoid of merit, is dismissed at the stage of admission.

In view of the above, I.A. No. 1046/2006, for grant of stay is also dismissed.

C.C. as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya

P.T.O.